App. F. IX-4

*Previous References*

1930.31 (Law)

**File No.** 98 30

**Serial Nos.** 1 – 4

*Later References*

(30)

# General and Revenue Secretariat.

---

*Serial Nos.* 7 only

**Part B for** October 1931

---

SUBJECT.

Second appeal No. 125 on the file of the High Court – (V. Settiraccaiya vs Shanmuga Pillai & another)

---

4) To The Govt. Advocate.
" Comr of Stamps
" Comptroller

No. P2063-5 of 7.10.31
Sanctions a bill for Rs 25/- of Mr. A Ramachandra Rao for having conducted R.A. 125/31 SC

Mr. Acting Registrar
23-10-31

G. R. S. APP F. III—1] 1930.

GENERAL AND REVENUE SECRETARIAT.

( Law )

NOTES.

File No. 98-30

FILE HEADING.

Second appeal no. 125 on the file of the H. Ct of Mysr
(V. Sitharamaiya vs B.M. Shamanna Gowda and another)

FROM The Commissioner of Stamps

No. C. 150/30-31 Dated 25. 1. 31 Received 26. 1. 31

| Diary No. 1694 | Enclos. | Spare copies | Serial No. 1 |
|---|---|---|---|

BRIEF ABSTRACT OF LETTER.

forwarding a copy of the notice received from the H. Ct of Mysore and requesting to direct the Govt. Ad to appear on behalf of the Stamp Commr.

NOTES AND ORDERS.

1) It is stated that the Case deals with the question whether certain Stamp papers in the possession of a judgment debtor, who happens to be a vendor of Govt. Stamps Can be attached in execution of a decree obtained against him

Dft to the Govt. Ad. requesting him to appear for Commr of Stamps in put up.

NOTES—First Sheet.

WD 01683—GPB—5,000—3-5-29

ISD 27/1

3918 - 1931

App. F. III—2]

General and Revenue Secretariat | File No. | of 193

Serial No.

2) Draft to the Govt. Advocate requesting him to appear for the Stamp Comr. may be approved.

Legal Rr

BMP
29.1.31

Approd.
D. M.
29.1.

May this issue?

TSD
31/1

Issue

BMP
31/1 2/2/31

To

The Govt. Ad.

No. P. 4676 d 3.2.31 requesting to appear on behalf of the Stamp Commr on 9.2.31, and to intimate the result of the Case.

3) Copy of this is to go to the Stamp Comr

TSD
5/2

Please send one

BMP 5/2

issued Memo. no. P. 4797 dated 10.2.31

Letter no 502 dated 5th Feby 193 from the Govt. advocate informing that he would appear in the Case as desired and do the needful,

for perusal

TSD
11/2

await report of the result of the Case

BMP
11/2

Sen C

TSD
11/2

4) Please enquire from at what stage the Case is now in the desk to which it is posted

BMP
15/8/31

NOTE—Contn. Sheet.

BM

W.D 02553—G P B—50,000—8-7 30

Ofc to the Govt. to print pamphlet

TSO 7/8

Issued 7/8

issued vide P. 1092 dt 19-8-31

TSD 21/8

Letter No. 144 dated 28th Aug 1931 from the Govt. to forwarding a copy of the judgment passed in the second appeal

5) This is an appeal of considerable importance. The question was whether the stamp papers in the possession of a judgment debtor who happens to be a vendor of Govt stamps can be attached in execution of a decree obtained against him. The plea in the first Court (Munsiff's) was that the stamp papers could not be attached or sold as the vendor had no saleable interest in them. On appeal to the Dist. Ct it was held that the stamp vendor had sufficient interest in the papers and that the same can be attached & sold in execution of a decree. In the 2nd appeal the order of the Dist. Judge is held to be correct and the appeal dismissed.

Subd for perusal.

TSD 31/8

6) Kind reference is invited to portions marked in red pencil in the judgment. Copy of the judgt

Serial No.

'Q'

GENERAL SECRETARY'S 31 AUG. 1931 No. 1625

COUNCIL 1 SEP. 1931 No. 5354

H 838/3-9-31

OFFICE OF THE FIRST MEMBER OF COUNCIL 7 SEPT. 1931 No. 2600

Copy of the judgt is to be in this file also mne

TYPING SECTION 9. SEP. 1931 GENL. & REV. SECTT.

will be sent to the Comr of Stamps with reference to his letter of the 25th Jan: 31 after it is perused by the 1st & 2nd members and the Fin: Secy.

Gen Secy)

mne 31/8/31

Let me 2/9

2nd member
1st member ✓
two
Fin: Secy)

mne 3/9

h 3/9/31

5/9 Hm mne 5/9

Let 8/9 (31

Hm 8.9.31.

Dft, please mne 8/9

1) Dft is put up for approval ISD 9/9

Issue mne 9/9

To

The Comr of Stamps

No. P. 1565 dt 11.9.31 forwarding a Copy of the Judgment for information.

B ISD 11/9

Note—Contn. Sheet

W.D. 01684—GPB—30,000—20-4-29

App. F. III—2j

General and Revenue Secretariat | File No. | of 193

Serial No.

OFFICE OF THE SECOND MEMBER OF COUNCIL
2 OCT. 1931
No. 1675

GENERAL SECRETARY
22 SEP. 1931
No. 2498

Letter No 162 dated 2.9.31 from the Govt. Ad. forwarding for sanction a bill for Rs 25/- of Mr. M. Ramachandra Rao, for services rendered in Second Appeal No 125/29 (Seetharamaiya vs Shamanna Gowda).

Kind reference is invited to para 5 supra. Dft G.O. sanctioning is subm^d for Consid^n and appr^l. In the judgment it is observed that each party should bear his own Costs.

TSD 22/9

May be approved

Gen. Secy

22/9

II Member

1/10

3/10

Issue 5/10

To

The Govt. Ad.

" Comm^r of Stamps

" Compt^r to Govt.

G.O. No. P. 2063-5 Law 98-30-4 dated 7.10.31 Sanctioning a bill for Rs 25/- of Mr. M. Ramachandra Rao for having Conducted R.A. 125/29-30 on the file of the H.Ct. of Mysore.

TYPING SECTION
5. OCT. 1931
GENL. & REV. SECTT.

B

TSD 1/10.

NOTE—Contn. Sheet

WD 02553—50,000—GPB—8-7 30

3694-1/30

POST BOX No. 5.
Telephone No. 221.

Tel. Address:—
"STAMPCOMR," BANGALORE.

**GOVERNMENT OF MYSORE.**

**STAMP DEPARTMENT.**

98-30-1

In reply, refer to
No C.15.0.30-31
Encls One

OFFICE OF THE COMMISSIONER OF STAMPS
IN MYSORE,

Dated, Bangalore, the 25th January 1931.

Immediate

FROM

S. HIRIANNAIYA, ESQ., M.A., B.L.,
~~S. PARAMAGOPALACHARI, Esq., B.A., B.L.~~
*Commissioner of Stamps in Mysore, Bangalore.*

To

P. MAHADEVAYYA, ESQ., B.A., B.L.,
Secretary to the Government of
His Highness the Maharaja of Mysore,
Legislative Department, Bangalore.

**Subject:**— 1931

SIR, 989 98/1

In forwarding herewith a copy of the notice received from the High Court of Mysore, in Second Appeal No.125 of 29-30 re " the question whether certain stamp papers in the possession of a judgment debtor, who happens to be a vendor of Government stamps can be attached in execution of a decree obtained against him", I have the honor to state that under the provisions of the Mysore Stamp Regulation and the rules framed thereunder, stamps are sold for cash from Government Treasuries to licensed vendors, who are allowed a commission at a certain percentage of the total value of stamps purchased as a remuneration for such sale. I think that stamps are not 'saleable' property in the sense in which that phrase is used in Section 60 of the Civil Procedure Code. The right to sell stamps is also personal and has been exempted from attachment by the same Section. Assuming that the stamps can be attached, the Court will not be in a position to find a purchaser for the stamps. Sale of stamps by a person other than a licensed vendor is an offence against Stamp Regulation (Section 69(b). Even persons who hold licenses to sell stamps have to obtain them from a Government Treasury.

2. I request that the Government Advocate may be directed by Government to appear on behalf of the Stamp Commissioner and plead the case on behalf of Government.

3. As the matter is urgent, I am sending a copy of this letter to the Government Advocate and am requesting him to take necessary - action in anticipation of Government sanction.

I have the honor to be,
Sir,
Your most obedient servant,

Commissioner of Stamps
in Mysore.

NSN/25-1-31.

C.C. Serial No,3.

IN THE HIGH COURT OF MYSORE AT BANGALORE.

Second Appeal No.125 of 1929-30.

V. Sitharamiah — Appellant.

Vs.

B.M.Shamanna Gowda & another — Respondent.

To

The Commissioner of Stamps in Mysore,
Bangalore.

Please take notice that the above case has been posted for hearing on the 9th day of February 1931. Re:- the question whether certain stamp papers in the possession of a judgment debtor, who happens to be a vendor of Government stamps, can be attached in execution of a decree obtained against him.

Dated 23rd January 1931. (Sd) N.B.Srinivasiengar,

Seal of the High Court. Deputy Registrar.

" C o p y "

Commissioner of Stamps
in Mysore.

Appendix F G—1

SUBJECT.....

.....

.....

Section Secret

File No. 98-30

Serial No. 2

No. P 4676 (1)

*Diary No. of letter replied to*.....

General and Revenue Secretariat

( )

*the* *193*

To

The Govt. Advocate

Sir,

Date of issue 3/2/31

Signed by Mr N S R

I am directed to forward herewith a copy of the notice in Second appeal No. 125 of 29-30 on the file of the High Court of Mysore (V. Sitharamaiya vs B.M. Shamanna Gowda & another) and to request you to appear on behalf of the Stamp Commr on 9th Febr 1931 to which date the Case is posted for Hg.

List of enclosures.....

Copied by.....

Examined by The result of the case of may kindly be reported to Govt in due course

The Papers made on each date of Hg may kindly be returned

I have etc

for LR

WD 02559—GPB—25,000—25-6-30

Thareeth

LR. TSD 2/1

Mr

3rd February 1931.

The Government Advocate,
Bangalore.

I am directed to forward herewith a copy of the notice in Second appeal No. 125 of 29-30 on the file of the High Court of Mysore (V.Sitharamaiya Vs B.M.Shamanna Gowda and another) and to request you to appear on behalf of the -- Stamp Commissioner on 9th February 1931 to which date the case is posted for hearing.

The result of the case may kindly be reported to Government in due course.

I have the honor to be,
Sir,
Your most obedient servant,

For Legal Remembrancer and
Secretary to Govt.Law Deptt.

ISD

c.n.

P 4676 of 32/31

The Government Advocate,

Bangalore.

I am directed to forward herewith a copy of the notice in Second appeal No.125 of 29-30 on the file of the High Court of Mysore (V.Sitharamaiya Vs.B.M.Shamanna Gowda and another) and to request you to appear on behalf of the Stamp Commissioner on 9th February 1931 to which date the case is posted for hearing.

The result of the case may kindly be reported to Government in due course.

I have the honour to be,
Sir,
Your most obedient servant,

Sd.P.Mahadevayya.

Legal Remembrancer and
Secretary to Govt.
Law Department.

Memo,No. P 4797 of 1602/31

Copy of the above is forwarded with compliments, to the Commissioner of Stamps in Mysore, for information, with ref. to his letter No. C.150/30-31 dated 25-1-1931.

By order,

For Legal Remembrancer and
Secretary to Govt.,
Law Department.

JSD

3918/30
P 830

In reply please refer to
No. 572

*Tel. Address*:—
"JURIST," Bangalore.

OFFICE OF THE GOVERNMENT ADVOCATE
IN MYSORE,

*Bangalore*....5th.....February.....*19* 31.

FROM

M. RAMACHANDRA RAO, ESQ., B.A., B.L.,
GOVERNMENT ADVOCATE IN MYSORE,
BANGALORE.

To

The Secretary to the Government
of H. H. The Maharaja of Mysore,
Law Department, BANGALORE.

SIR,

With reference to your letter No. P.4676/Law.98-30-2, dated the 3rd February 1931 authorising me to appear on behalf of the Stamp Commissioner, in Second Appeal No. 125 of 1929-30 on the file of the High Court of Mysore, (V. Sitharamaiya VS. B.M. Shamanna Gowda and another) I have the honor to state that I shall appear in the case as desired, and do the needful in the matter.

2. The result of the case will be intimated to you as soon as it is disposed of.

I have the honor to be,
Sir,
Your most obedient servant,

M. Ramachandra Rao

Government Advocate.

CSN.

Appendix F G–1]

SUBJECT.....

.....

.....

*Diary No. of letter replied to*.....

General and Revenue Secretariat

( )

*the* *193* .

Date of issue 19/8/31

Signed by

List of enclosures.....

Copied by

Examined by

**Section**

**File No.**

**Serial No.**

No. P 1092

To The Govt. Advocate

Sir,

With reference to the Correspondence ending with your letter no 501 dated 5th Feby 1931 re: the Second appeal no. 125/1930 on the file of the High Court of Mysore (V. Sathanarayya vs B.V. Shamanna Gowda & another) I am directed to enquire at what stage the Case stands at present: The date to and the purpose for which the Case stands adjourned may kindly be intimated early

I have etc

ISD 19/5

for

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

General and Revenue Secretariat

*Dated, Bangalore,* 18th August 1931.

*No.*

*From*

The *General Secretary to the Government of His Highness the Maharaja of Mysore.*

*To*

The Government Advocate,

B a n g a l o r e.

Sir,

With reference to the correspondence ending with your letter No.502 dated 5th February 1931, re: the second appeal No.125/29-30 on the file of the High Court of Mysore (V. Sitharamaiya -VS- H.M. Shamanna Gowda and another), I am directed to enquire at what stage the case stands at present. The date to and the purpose for which the case stands adjourned may kindly be intimated early.

I have the honour to be,

S i r,

Your most obedient servant,

For General Secretary to Government.

K.H.R.2.
18/8.

11349 31/10

In reply please refer to
No. 162

Tel. Address:
"JURIST," Bangalore.

OFFICE OF THE GOVERNMENT ADVOCATE
IN MYSORE,

*Bangalore*.....1st.....September.....*1931*.

2nd

Law 98-30-3

GENERAL SECRETARIAT
2 SEP 1931
No. 107

From

The Government Advocate
in Mysore, BANGALORE.

To

The Secretary to the Government
of H.H. The Maharaja of Mysore,
General Department, BANGALORE.

Sir,

With reference to Law Secretary's letter No.P.4676/Law 98-30-2 dated the 3rd February 1931 and in continuation of this office letter No. 144 dated the 28th August 1931, I have the honor to forward herewith, for the sanction of Government, a Bill of Mr. M. Ramachandra Rao, for Rs.25/- only, being his remuneration for professional services rendered on behalf of Government in conducting Second Appeal No.125 of 1929-30 on the file of the High Court of Mysore, (V. Seetharamiah VS. B.M. Shamanna Gowda and another).

Copy-29
3/9 Feby

I have the honor to be,
Sir,
Your most obedient servant,

Government Advocate.

CSN.

Appendix F G—1]

SUBJECT .....

.....

.....

Section

File No.

Serial No.

*Diary No. of letter replied to* .....

No. 1565 (.

To The Commissioner of Stamps
in Mysore, B'lore.

General and Revenue Secretariat

( )

*the* 193 .

Sir

In Continuation of

Date of issue 11/9/31

this office memo no. L. 4797 dated
10.2.31 re. the Second appeal

& with reference to your letter no

Signed by .....

no. 105 of 29/30 on the file of the
C [50]30.31 dated
25th Jan 1931 H.C. of Mysore (V. Sitharamayya
vs B.M. Shamannagowda & another)

I am directed to forward
herewith a Copy of the Judgment
passed ~~in the appeal~~, ~~received~~
in the case for your information
~~from the Govt. AD.~~ with his letter
~~No. dated 25th Aug 1931.~~

List of enclosures (One)

Copied by .....

I have the

Examined by .....

ISD 9/9 MMP 9/9 for Secy

12

10th September 31.

H.V. Ramasvami,, Esq., M.A., B.L.,

The Commissioner of Stamps in Mysore.

In continuation of this office memo No.P.4799 dated 10th February 1931 and with reference to your letter No. C.150/30-31 dated 25th January 1931 re. the Second Appeal No.125 of 1929-30 on the file of the High Court of Mysore (V. Seetharamayya vs. B.K. Shamanna Gowda and another), I am directed to forward herewith a copy of the Judgment passed in the case for your information.

I have the honour to be,
Sir,
Your most obedient servant,

for General Secretary to Government
ISD

NSG.2.

1062
P 31/3

In reply please refer to
No. 144

Tel. Address :—
"JURIST," Bangalore.

OFFICE OF THE GOVERNMENT ADVOCATE
IN MYSORE,

*Bangalore*.....25th August.....*19*31.

2847

GENERAL SECRETARY.
29 AUG. 1931
No. ..... From

The Government Advocate
in Mysore, BANGALORE.

To

The Secretary to the Government
of H.H. The Maharaja of Mysore,
General Department, BANGALORE.

Sir,

With reference to your letter No. P.1092/Law. dated the 19th August 1931, I have the honor to forward herewith, for the information of Government, a copy of the Judgment passed in Second Appeal No.125 of 1929-30 on the file of the High Court of Mysore. (V. Seetharamiah VS. B. M. Shamanna Gowda & another).

I have the honor to be,

Sir,

Your most obedient servant,

V. Narayanaswami Iyer

Government Advocate.

CSN.

IN THE HIGH COURT OF MYSORE AT BANGALORE.

Friday the 19th day of June 1931.

Present.

Mr. JUSTICE D. K. RAMA RAO,

and

Mr. JUSTICE G. SREENIVASA IYER.

Second Appeal No. 125 of 1929-30.

V. Sitaramiah, Defendant, (Judgment-debtor). APPELLANT.
(By Mr. M. Srinivasa Rao).

1. B.M. Shamanna Gowda, ) Plaintiffs. (Decree-Holders). ) RESPONDENTS.
2. B.M. Chandrasekhara Gowda )

(Mr. H. Srinivasa Murthi, for 1st Respondent.
Mr. M. Ramachandra Rao, Government Advocate, for Stamp Commissioner, 2nd Respondent absent and unrepresented).

Second Appeal against the order dated 18th September 1929 passed by the District Judge of Bangalore in Regular Appeal No. 215 of 1928-29 reversing that (dated 6th February 1929) of the First Munsiff of Bangalore, in Execution Case No. 1395 of 1927-28.

This Second Appeal coming on for hearing on Tuesday the 10th day of February 1931, the Court pronounced the following:-

ORDER.

O R D E R.

In execution of a decree against the Judgment-debtor (appellant) who is a licensed stamp vendor, a -- quantity of stamp papers which were in his possession was attached at the instance of the decree-holder. An objection was taken on Judgment-debtor's behalf to the effect that the papers could not be attached or sold as he had no saleable interest in them within the meaning of section 60 of the Civil Procedure Code, and that he was only an agent of Government to sell stamps to the publica on behalf of - Government. This plea prevailed in the first court, but on appeal the learned District Judge took a different view and held that the Judgment-debtor had sufficient interest in the attached papers and that the same could, therefore, be sold by the Court in execution of the decree.

We had the advantage of the arguments of the learned counsel on both sides, as well as of the learned Government Advocate on behalf of the Commissioner of Stamps, whom we though it desirable to notify.

There are no decided cases bearing directly on the uestion before us, though for analogy we may cite 9 Bom.518, 10 Bom. L. R. 13 and 29 I. C. 339 (Nagpur) which are against the appellant's contention. The first of these cases refers to the sale of arms for the possession and use of which the - Purchaser should get a license under the Arms Act, while the next two relate to the validity of attachment of liquor which is an excisable property. After bestowing our careful con-

sideration

consideration to the question, we think that the decision of the District Judge is correct. It should be observed that the Government did not enrtust the stamp papers to the Judgment debtor as a mere agent of theirs, for instance by taking security for the cost of the stamps supplied to him. On the other hand, the papers were really sold to the Judgment debtors for the price paid by him in cash after allowing a small per centage of discount, see rules 45 and 47 in the Mysore Stamp Manual, page 168. Hence the stamp papers take the place of the money paid by the Judgment-debtor and as such become his property, though he could not sell them to retail buyers except under the authority of the license issued to him, compare 10 Bom. L. R. 13 (17). Thus there are two different and independent rights held by the Judgment-debtor, (1) the right over the papers as the purchasers thereof from Government for value duly paid by him, and (2) the power to sell them in retail with his endorsements thereon, which right under the license he could not transfer and which the Government alone could grant. There can be no reasonable objection to the attachment and sale of the first mentioned right, leaving the purchaser to obtain from Government in due course the requisite license to enable him to secure the actual custody of the papers from the court and then sell them to the general public. The Civil Procedure Code or the Stamp Laws contain no prohibition to the placing of attachment by Courts on this right vested in the stamp vendor. As observed in 29 I.C., 339 (343) the existence of restrictions upon the sale of stamp papers cannot take them out of the category of saleable property either in law or common sense.

As a matter of fact several contingencies may arise such

such as, the surrender of the license by the vendor himself or its cancellation by Government, the expiry of the period covered by the license, and the ~~xx~~ vendor's death; to provide for these cases, special provisions have been made authorising the refund of money in regard to the stamp papers left unused, giving deduction for the discount already allowed, see section 54 of the Stamp Regulation, page 142 of the Mysore Stamp Manual and Donogh's Indian Stamp Law, 8th edition, page 474. It is clear that though the license itself cannot be transferred by the vendor, he can obtain a refund from Government of the price paid by him; over that right to get refund he has a disposing power which he may exercise for his own benefit within the meaning of section 60 of the Civil Procedure Code, and in the event of his death the said right necessarily passes to his heir. In these circumstances, we cannot discover any reasonable objection to or difficulty in giving effect to the attachment and sale of the Judgment-debtor's interest in the attached papers for what it is worth; as in the case of attachment and sale of fire arms, the purchaser will have to produce the license or other orders of Government before he could take delivery of the stamp papers from court or otherwise work out his rights under the sale in his favour. It is needless to add that the Court will exercise its powers so as to harmonise the provisions found in the several enactments. "It is the duty of every Judge to exercise the powers vested in him in such a way as to give effect to all provisions of law. Therefore, when a Civil Court attaches property of a nature governed by any special law, such as the Indian ~~Stamp~~ Arms Act, the Opium Act, the Excise Act or the like, such court is bound to proceed with great circumspection so as not to defeat any of the purposes for which such special law was enacted". 29, I.C. 339 (343).

Accordingly,

Accordingly, we maintain the order of the District Judge as correct and dismiss this appeal. Having regard to the nature of the point in controversy we would leave each party to bear his own costs in this Court.

(Sd) D. K. Rama Rao,
JUDGE.

(Sd) G. Sreenivasa Iyer,
JUDGE.

---

Copy.

S. Ramaswami Iyer
Government Advocate.

-88/P 831 19

Postal Address :—
POST BOX No. 5.

Tel. Address :—
'STAMPCOMR,' BANGALORE.

GOVERNMENT OF MYSORE.

STAMP DEPARTMENT.

In reply, refer to
No C 150/30-3
Encls one

OFFICE OF THE COMMISSIONER OF STAMPS
IN MYSORE,

Dated, Bangalore, the 8th September 193 1

FROM

D. SRINIVASA IYENGAR, ESQ., B.A.,
*Commissioner of Stamps in Mysore.*

FINANCIAL BRANCH 1117 1931 SECL & REV. SECTT.

RAJASEVAPARAYANA

To B. SRINIVASA IYENGAR, ESQ., B.A., B.L.,
*Secretary to Government of His Highness the Maharaja of Mysore,*
*Financial Department, Bangalore.*

**Subject:**

SIR,

With reference to correspondence ending with Law Secretary's Memo No.P.4797 dated 10th February 1931, I have the honor to forward herewith, for the information of Government, a copy of the order passed by the High Court in Second Appeal No.125/29-30 holding that the stamp papers in the possession of licensed stamp vendor can be attached in execution of a decree obtained against such vendor.

I have the honor to be,
Sir,
Your most obedient servant,

D. Srinivasa Iyengar
Commissioner of Stamps.

This is transferred to the Law Deptt
W 11/9 Sent Orst: with compliments)

11/9

This will be filed after perusal.

NSN.

ISD 11/9

11/9

IN THE HIGH COURT OF MYSORE AT BANGALORE.

Friday the 19th day of June 1931.

Present.

Mr. JUCTICE D.K.RAMA RAO,
and
Mr.JUSTICE G.SRINIVASA IYER.

Second Appeal No. 125 of 1929-30.

V. Sitharamiah, Defendant, (Judgment.debtor). Appellant.
( By Mr. M. Srinivasa Rao).

-Vs-

1.B.M.Shamanna Gowda, 2.B.M.Chendra-sekhara Gowda } Plaintiffs. (Decree-Holders) Respondents.

Mr.H. Srinivasa Murthi, for 1st Respondent.
Mr.M.Ramachendra Rao, Government Advocate, for Stamp Commissioner,
2nd Respondent absent and unrepresented).

Second Appeal against the order dated 18th September 1929 - passed by the District Judge of Bangalore in Regular Appeal No.215 of 1928-29 reversing that (dated 6th February 1929) of the First Munsiff of Bangalore, in Execution case No.1395 of 1927-28.

This second Appeal coming on for hearing on Tuesday the 10th day of February 1931, the Court pronounced the following

ORDER.

In execution of a decree against the judgment debtor(appellant who is a licensed stamp vendor, a quantity of stamp papers which were in his possession was attached atthe instance of the decree-holder. An objection was taken on Judgment-debtor's behalf to the effect that the papers could not be attached or sold as he had no saleable interest in them within the meaning of Section 60 of the Civil Procedure Code, and that he was only an agent of Government to sell stamps to the public on behalf of Government. This plea prevailed in the first court, but on appeal the learned District Judge took a different view and held that the judgment debtor had sufficient interest in the attached papers and that the same could, therefore, be sold by the Court in execution of the decree.

We had the advantage of the arguments of the learned coun-

counsel on both the sides, as well as of the learned Government Advocate on behalf of the Commissioner of Stamps, whom we thought it desirable to notify.

There are no decided cases bearing directly on the question before us, though for analogy we may cite 9 Bom.518, 10 Bom.L.R. 13 and 29 I.C.339(Nagpur) which are against the appellant's contention. The first of these cases refers to the sale of arms for the possession and use of which the Purchaser should get a license under the Arms Act, while the next two relate to the validity of attachment of liquor which is an excisable property. After bestowing our careful consideration to the question, we think that the decision of the District Judge is correct. It should be observed that the Government did not entrust the stamp papers to the Judgment debtor as a mere agent of theirs, for instance by taking security for the cost of the stamps supplied to him. On the other hand, the papers were really sold to the Judgment debtor for the price paid by him in cash after allowing a small percentage of discount, see rules 45 and 47 in the Mysore Stamp Manual, page 168. Hence the stamp papers take the place of money paid by the judgment debtor and as such become his property, though he could not sell them to retail buyers except under the authority of the license issued to him, compare 10 Bom.L.R. 13(17). Thus there are two different and independent rights held by the Judgment debtor, (1) the right over the papers as the purchaser thereof from Government for value duly paid by him, and (2) the power to sell them in retail with his endorsements thereon, which right under the license he could not transfer and which the Government alone could grant. There can be reasonable objection to the attachment and sale of the first mentioned eight leaving the purchaser to obtain from Government in due course the requisite license to enable him to secure the actual custody of the papers from the Court and then sell them to the general public. The Civil Procedure Code or the Stamp laws contain no prohibition to the placing of attachment by Courts on this right vested in the stamp vendor. As observed in 29 I.C.339(343), the existence of restrictions upon the sale of stamp papers cannot take them out of the category of saleable property either in law or common sense.

As a matter of fact several contingencies may arise such as, the

the surrender of the license by the vendor himself or its cancellation by Government, the expiry of the period covered by the license, and the vendor's death; to provide for these cases, special provisions have been made authorising the refund of money in regard to the stamp papers left unused, giving deduction for the discount already allowed, see Section 54 of the Stamp Regulation, page 142 of the Mysore Stamp - Manual and Donough's Indian Stamp Law, 8th edition, page 474. It is clear that though the license itself cannot be transferred by the - vendor, he can obtain a refund from Government of the price paid by hi over that right to get refund he has a disposing power which he may - exercise for his own benefit within the meaning of Section 60 of the Civil Procedure Code, and in the event of his death the said right - necessarily passes to his heir. In these circumstances, we cannot - discover any reasonable objection to or difficulty in giving effect to the attachment and sale of the judgment debtor's interest in the - attached papers for what it is worth; as in the case of attachment and sale of fire arms, the purchaser will have to produce the license or other orders of Government before he could take delivery of the - stamp papers from court or otherwise work out his rights under the sal in his favour. It is needless to add that the Court will exercise its powers so as to harmonise the provisions found in the several enactments. "It is theduty of every Judge to exercise the powers vested in him in such a way as to give effect to all provisions of law. Therefore, when a Civil Court attaches property of a nature governed by any special law, such as the Indian Arms Act, the Opium Act, the Excise - Act or the like, such court is bound to proceed with great circumspection so as not to defeat any of the purposes for which such special - law was enacted". 29.I.C.339(343). Accordingly, we maintain the order of the District Judge as correct and dismiss this appeal. Having regard to the nature of the point in controversy we would leave each -- party to bear his own costs in this Court.

(Sd) D. K. Rama Rao,
JUDGE.
(Sd) G.Srinivasa Iyer,
JUDGE.

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"Copy,"

G Madhava Rao
For Commissioner of Stamps.

G.R.S. App. F VI G-2]

SUBJECT .....

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*Diary No. of letter replied to*.....

Sec. Law

File No. 98-30

Serial No. 4

General and Revenue Secretariat

( )

*the* *193* .

*Proceedings of the Government of His Highness the Maharaja of Mysore.*

Date of issue 7/10/31

Signed by .....

*Read*—

Letter no 162 dated 2nd Sept 1931 from the Govt. Advocate forwading for Sanction a bill for Rs 25/- of Mr. M. Ramachandra Rao, being his remuneration for the professional services rendered in the Second appeal No. 125 of 1929-30 on the file of the H. Ct. of Mysore (V. Seetharamaya vs B.M. Shamanna Gowda & another) requesting the question of attachability of the stamp papers ~~order~~ in the custody of a licensed vendor of stamps. order

Sanctioned :- The Commissioner of Stamps is requested to point out ~~to~~ direct the Comptroller

May this be

(i) Printed ?

(ii) treated as a standing order ?

(iii) published in the Gazette, English Part?

(iv) translated ?

(v) placed at the disposal of the press ?

(vi) published in the Gazette, Kannada Part ?

Probs (1)

the Source to which the Cost is to be debited.

HF 212

TSD 22/9 DNP 22/9 Gen 1 see Y

To

The Govt. Ad. with rebill

Comm of Stamps

Comptroller to Govt

Copy to HBV

*List of enclosure*

PROCEEDINGS OF THE GOVERNMENT OF HIS HIGHNESS
THE MAHARAJA OF MYSORE.

EAD 25

Read:—

Letter No.162 dated 2nd September 1931 from the Government Advocate, forwarding for sanction a bill for Rs.25/- of Mr. K. Ramachandra Rao, being his remuneration for the professional --- services rendered in the Second Appeal No.126 of 1929-30 on the file of the High Court of Mysore (V. Seetharamaiya -VS- B.K.Chamamma Gowda and another) regarding the question of attachbility of the Stamp papers in the custody of a licensed vendor of Stamps.

ORDER NO.

Dated, Bangalore, the 8th October 1931.

Sanctioned

The Commissioner of Stamps is requested to point out direct to the Comptroller the source to which the cost is to be debited.

Narasaraja

For General Secretary to Government.

ISD

To

The Government Advocate, with the bill.
" Commissioner of Stamps in Mysore.
" Comptroller to Government.

K.K.K.5.
8/10.